



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

APR 14 2006

Mr. George Tubies  
2390 York Road  
Gettysburg, PA 17325

Re: EPA Docket No. CWA-03-2006-0105DW  
ORDER FOR COMPLIANCE

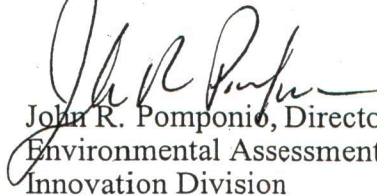
Dear Mr. Tubies:

Enclosed is an Order for Compliance that requires you to cease unauthorized work on your property located at 2390 York Road in Gettysburg, Adams County, Pennsylvania which you own or control. The Order also requires mitigation of the environmental harm which was caused by the unlawful discharge to waters of the United States. The U.S. Environmental Protection Agency (EPA) has issued this Order under the authority of Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a).

The CWA prohibits discharges to waters of the United States, including dredge or fill material, without a permit from the U.S. Army Corps of Engineers (Corps). Since activities that you have conducted resulted in discharges to jurisdictional waters of the United States without a permit, the activities constitute a violation of Section 404 of the CWA. This Order requires you to mitigate for the environmental harm caused by the placement of fill material and the grading of approximately two (2) acres of wetlands which are immediately adjacent to an unnamed tributary of White Run.

EPA is prepared to answer any questions you may have. Todd Lutte is assigned to this matter and may be reached by phone at 215-814-2099.

Sincerely,

  
John R. Pomponio, Director  
Environmental Assessment and  
Innovation Division

Enclosure

cc: Frank Plewa – USACOE  
Rusty Ryan – ACCD



BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103

In The Matter of	)	
	)	
Mr. George Tubies	)	Proceeding Under Section
	)	309(a) of the Clean Water
	)	Act, 33 U.S.C. § 1319(a)
Property Located At:	)	
	)	
2390 York Road	)	
Gettysburg, Pennsylvania	)	ORDER FOR COMPLIANCE
	)	
Respondent	)	Docket No. CWA-03-2006-0105DW

**I. STATUTORY AUTHORITY**

1. This Order for Compliance is issued under the authority vested in the United States Environmental Protection Agency (EPA) by Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a) ("CWA" or "Act"). The Administrator has delegated this authority to the Regional Administrator of EPA Region III who in turn has redelegated it to the Director of the Environmental Assessment and Innovation Division.

**II. ALLEGATIONS**

2. Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
3. Respondent, Mr. George Tubies, is the owner of the property at 2390 York Road, which is located adjacent to the north side of U.S. 30 and the west side of Granite Station Road, Adams County, Pennsylvania, identified as "the Site" on the attached map labeled Exhibit "A." The property contains an unnamed tributary to White Run which flows into the Rock Creek which flows into the Monocacy River which flows into the Potomac River which flows into the Chesapeake Bay. Therefore, the area is "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2; 40 C.F.R. § 122.2.
4. Commencing on multiple occasions between 2001 and 2006, Respondent, or persons acting on behalf of Respondent, operated equipment which discharged dredged and/or fill material to waters of the United States located on the Site described in Paragraph 3,





above, and further depicted on Exhibit "A", attached hereto. Respondent's activities included the placement, pushing and grading of fill material in approximately two (2) acres of wetlands which are immediately adjacent to unnamed tributary to White Run which flows into the Rock Creek which flows into the Monocacy River which flows into the Potomac River which flows into the Chesapeake Bay for the purpose of creating fast land.

5. The term "fill material" within the meaning of 40 C.F.R. § 232.2, includes any pollutant which replaces portions of "waters of the United States" with dry land or which changes the bottom elevation of a water body for any purpose.
6. The equipment referenced in Paragraph 4, above, which has discharged dredged and/or fill material to "waters of the United States," constitutes a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).
7. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of dredged and/or fill material from point sources to "waters of the United States" except in compliance with a permit issued by the Secretary of the Army under Section 404 of the Act, 33 U.S.C. § 1344.
8. At no time during the discharge of dredged and/or fill material to the "waters of the United States" located on the Site did the Respondent have a permit from the Secretary of the Army as required by Section 404 of the Act, 33 U.S.C. § 1344.
9. Respondent, by discharging dredged and/or fill material to the "waters of the United States" without authorization, has violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).

### III. ORDER FOR COMPLIANCE

Therefore, this 14<sup>th</sup> day of April, 2006, the Respondent is hereby ORDERED, pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a), to do the following:

10. Cease and desist all discharges without a permit to waters of the United States at the Site.
11. Within forty five (45) days of the effective date of this Order, submit a detailed mitigation plan to EPA for approval. This plan should include at a minimum, the removal of all fill material in wetlands and disposal of the material in an upland location.
12. After review of the Mitigation Plan, EPA will: a) approve the plan, in whole or in part; b) approve the plan upon specified conditions; c) require changes to the plan to cure any deficiencies; d) disapprove the plan, in whole or in part, or e) any combination of the above.



13. If EPA disapproves all or part of the Mitigation Plan, approves the Mitigation Plan with conditions, or requires changes to the plan, Respondent shall, within fourteen (14) days of receipt of EPA's communication, correct the deficiencies, resubmit the plan for approval, and indicate assent to any conditions. EPA retains the right, if the plan is not approved as provided in this Order, to order mitigation in accordance with a plan developed by EPA. Respondent shall implement the plan as approved, modified or ordered by EPA as provided below, and the plan as approved, modified or ordered by EPA shall be incorporated into this Order by reference.
14. Respondent shall notify EPA within ten (10) days of completing the mitigation work. EPA and its authorized representatives, including contractors, shall have authority upon presentation of proper identification to enter the Site at any time without prior notification to monitor the activities required by this Order. EPA reserves and does not waive all existing inspection and information requesting authority. EPA will inspect the Site to ensure strict compliance with this Order and the terms of the approved Restoration Plan. EPA will continue to monitor the Site to ensure the protection of waters of the United States.
15. Respondent's failure to complete the work in a manner consistent with this Order shall be deemed a violation of this Order.
16. The Mitigation Plan and all other correspondence should be sent to:  
  
Jeffrey D. Lapp  
Wetlands and Oceans Program Manager (3EA30)  
United States Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103-2029
17. Respondent's compliance with the terms of this Order shall not relieve Respondent of its obligation to comply with all applicable provisions of the Clean Water Act or any other Federal, State or local law or regulation. Issuance of this Order is not an election by EPA to forego any civil or criminal action otherwise authorized by the Clean Water Act. EPA reserves the right to seek any remedy available under the law that it deems appropriate to the violations described herein. Compliance with this Order shall not be a defense to any action commenced pursuant to such authorities.
18. Violation of the terms of this Order may result in further EPA enforcement action including, but not limited to, imposition of administrative penalties, pursuant to 33 U.S.C. § 1319(g) as modified by the Debt Collection Procedures Act of 1996 and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and/or initiation of judicial proceedings that allow for civil penalties of up to \$32,500 per day for each day of violation that occurs, and/or for the criminal sanctions of imprisonment and fines of up to \$50,000 per day, 33 U.S.C. § 1319(c).





**IV. EFFECTIVE DATE**

19. The effective date of this Order shall be the date of receipt of the executed document.

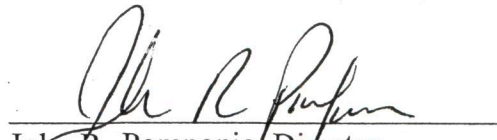
**V. NOTICE OF INTENT TO COMPLY**

20. Within ten (10) days of the effective date of this Order, Respondents shall submit to EPA a Notice of Intent to Comply with the Order. The Notice shall be submitted to:

Jeffrey Lapp  
Wetlands and Oceans Program Manager (3EA30)  
United States Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103-2029

Date:

4/14/06

  
John R. Pomponio, Director  
Environmental Assessment and Innovation Division

